

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

04/27/18
04:59 PM

Order Instituting Rulemaking to Continue)
Implementation and Administration, and)
Consider Further Development, of)
California Renewables Portfolio Standard Program.)
_____)

Rulemaking 15-02-020
(Filed February 26, 2015)

**PHOENIX ENERGY'S COMMENTS ON THE
ASSIGNED COMMISSIONER'S RULING ON BIOMAT**

DATED: April 26, 2018

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Phoenix Energy submits these comments on the Assigned Commissioner’s Ruling Ordering Party Comments On Proposed Modification On Language In Sections 4.1 And 4.2 Of The BioMAT Power Purchase Agreement (“Assigned Commissioner’s Ruling”), filed April 16, 2018. Phoenix Energy supports the proposed modifications and is indebted both to the Commission and the Assigned Commissioner for seeking to finally and fully enforce the, now multiple, Statutes and prior Commission orders which underwrite the BioMAT program, as well as to call out PGE directly in its bench comments after passing E-4992 on March 22, 2018. Sadly, the communities we represent that would reduce the fire danger in the Wine Country Fire (City of Napa) as well as the forested communities of the Sierra (Wilseyville, Camptonville, Mariposa, and North Fork) all remain without PPAs.

- 1. Phoenix Energy Supports the Proposed Modification. PG&E must be compelled to Execute BioMAT Contracts Upon Adoption of the Modification without continuing its campaign of delay.**

Again, we begin by reminding that we are most indebted to the Commission for seeking to broker this solution and as such we support the proposed changes. However, we must caution that based on a long history of PGE's active measures to delay implementation of this program as well as its history of ignoring Commission orders, letters, resolutions and rulings they must be held firmly to account for this program missing yet another fire season.

2. The Commission should order PGE to immediately comply with E-4922 until that Resolution is modified by the full Commission

Resolution E-4922 was adopted unanimously by the Commission at a Commission business meeting. The Executive Director contradicted that resolution by granting PGE an indefinite extension of time to execute BioMAT contracts removing the Commission set fixed deadline. Since it now appears that the Investor Owned Utilities in their comments do not agree on how to address PGE's concerns there is no certainty about how and when that might be resolved. In the meantime the projects with pending BioMAT contracts and the funders both Private and California State and Federal funding agencies now have no idea when said PPAs might be executed. Therefore we urge the Commission to enforce resolution E-4922 and order PGE to execute the pending BioMAT contracts with the current PPA language with the acknowledgement that the contracts may be revised to address PGE's concern. Southern California Edison has continued to execute BioMAT contracts. There is no reason that PGE should be allowed to disregard the Commissions resolution particularly when no court has invalidated the BioMAT decision and the *Winding Creek Case* did not invalidate any of the existing ReMAT contracts.

3. PG&E must not be granted additional time to use the same information that has already been supplied to it by participants to press print on a standard offer contract whose terms are not negotiable.

We urge the Commission to reject any further requests for delay. We believe in a court filing this would be something akin to 'asked and answered.' PGE has provided written

documentation to our firm that they have what they need to issue the PPAs awarded in October 2017. We state openly for the record that we will not be changing any of our now several reiterations of the same data we provided in our PPR forms.

4. We urge the Commission to set a firm deadline for contract issuance

In the Commission's order E-4992 a firm deadline of Earth Day 2018 was set for the issuance of the PPAs with great satisfaction. Now as a result of the Executive Director's April 20th 2018 letter the E-4992 fixed deadline has been superseded with a T+15 days, with T being the Commission "addressing the Assigned Commissioner's Ruling" of April 16th 2018. We ask the commission to move as expeditiously as possible to convert this back to a fixed deadline that can be used to create certainty.

We remind the Commission that after this much time projects are failing. The Energy Commission has issued stop work notices to some projects, threatened cancelation of grants to others due to these overwhelming delays in PPA execution. Private funding sources teeter because of a fundamental lack of certainty that these PPAs will ever be issued. As we have mentioned before our Company has particular experience in investment funds withdrawing from term sheets because of concerns about the State following through on BioMAT. We are certain PGE is aware of this and we wish to be certain the Commission is as well.

For all these reasons, Phoenix Energy supports the proposed modification to the BioMAT PPA while urging that PG&E will be required to execute BioMAT contracts as soon as the modification is finalized.

5. Phoenix Energy Urges the Commission to Adopt the Modification on an Expedited Basis.

Phoenix Energy urges the Commission to adopt the proposed modification at the Commission's next scheduled business meeting, provided that no party objects to the proposed modification in comments on the Assigned Commissioner's Ruling. The Commission's Rules of Practice and Procedure allow for an expedited decision where

parties stipulate to the decision or where there is no objection to it. As Rule 14.6 provides:

(b) The Commission may reduce or waive the period for public review and comment on proposed decisions and their alternates, where all the parties so stipulate, and on draft resolutions and their alternates, where all persons identified in subsection (1), (2), (3) or (4) of Rule 14.2(d) so stipulate.

(c) In the following circumstances, the Commission may reduce or waive the period for public review and comment on draft resolutions and proposed decisions, and may reduce but not waive the period for public review and comment on alternate draft resolutions and alternate proposed decisions:

(1) in a matter where temporary injunctive relief is under consideration.

(2) in an uncontested matter where the decision grants the relief requested.

(3) for a decision on a request for review of the presiding officer's decision in an adjudicatory proceeding.

If no party objects to the proposed modification, then the Commission should adopt the change at the next possible business meeting to avoid further delays in BioMAT contract execution.

6. Phoenix Energy Urges the Commission to Order PGE to Execute Pending BioMAT Contracts Within Seventy-Two Hours of the Final Decision Adopting this Modification.

We have written confirmation from the Utility that they have what they need. PGE has no need to confirm for the third or fourth time what is in our submitted paperwork. We will not be modifying anything. We urge the Commission not to wait another fire season. Quite frankly, we're befuddled that PGE spends more money on full page color adverts professing love of the Governor's Tree Mortality Task Force on which a number of the Parties to this Proceeding sit instead of actually moving forward on bioenergy projects which reduce fire danger by consuming this excess material. We take this opportunity to remind PGE that we'd be delighted to help them reduce fire by removing fuel loads in Napa or North Fork or elsewhere and posit that actually doing something in this regard PGE would do more to endear its customers to it rather than, like Placer County or the City of Arcata seek CCAs as the sole option to actually get action. With the sheer number of Commission

decisions, orders, resolutions and letters to PGE to comply it strains credulity that they would now insist they now need more time to comply.

7. Even today PGE is still adding superfluous new requirements seeking to kick projects out of the program

Even as late as today PGE continues to impose arbitrary new requirements to maintain eligibility. The Commission should stop PGE from continuing to add additional contract requirements this far along in the process outside the Proceeding. We urge the Commission to see the pattern of behavior. This is not participation in good faith. It is not up to PGE to determine eligibility it is up to the Commission which it did when it issued the Final Decision on BioMAT. No unilateral alterations outside of the Proceeding should be allowed, least of all those slipped in a random email on an unrelated topic.

“Please note that moving forward, BioMAT participants in the queue are required to actively attest that they still meet the eligibility criteria. This attestation is in the form of a check box on the price selection screen. If the attestation and price selection are not completed, participants will be assumed to be no longer eligible and may lose their position in the BioMAT queue.¹”

We request therefore that the Commission require PGE to “actively attest” to all BioMAT participants that it will sign all outstanding and future BioMAT PPAs and faithfully implement the program. Without such an active attestation we fail to see how this latest round of modifications will result in the successful implementation of BioMAT.

DATED: April 26, 2018

Respectfully submitted,

/s/ Gregory John Stangl
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¹ Part of email sent today from pgebiomat@acciongroup.com on April 26th, 2018 at 9:28AM

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VERIFICATION

I am a representative of the corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 26th day of April, 2018, in Walnut Creek, California.

/s/ Gregory John Stangl

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